



# Congressional Record

PROCEEDINGS AND DEBATES OF THE 105<sup>th</sup> CONGRESS, FIRST SESSION

Friday, May 23, 1997

## Senate

s5078

### CHEMICAL WEAPONS CONVENTION IMPLEMENTATION ACT OF 1997

Mr. BIDEN. Mr. President, I want to compliment my esteemed chairman, Senator Hatch, for forging a consensus on this complex issue. As my colleagues know, I was engaged in negotiations on the Chemical Weapons Convention resolution of ratification for months, and I know first hand how many deeply held views this treaty implicates and how difficult it is to bring the parties together.

But we succeeded on the treaty and now, with the help of many Senators on both sides of the aisle, have succeeded on the implementing legislation.

I supported this compromise measure in committee and will do so again now because it takes the important steps necessary to implement the Chemical Weapons Convention .

As required by the convention , this bill will enact tough criminal sanctions for possessing, stockpiling, transferring, and using chemical weapons . It will also require U.S. companies to report on their production and use of potentially dangerous chemicals and submit to inspections of their facilities.

Taking these steps will demonstrate to the rest of the world that the United States is committed to continuing its leadership role in arms control and other issues of global importance.

I want to make clear, however, that I do not support some of the provisions in this bill and have very serious concerns about their impact on the convention .

In particular, I do not believe we should be granting the President discretionary authority to deny a CWC inspection based on national security grounds, as would be done by section 401. By signing and ratifying this treaty, the United States--with the advice

and consent of 74 Members of this body, given less than a month ago--agreed to allow certain inspections, subject to our constitutional requirements. With few exceptions, denial of a duly authorized inspection would violate the convention .

Even if the President never exercises this authority, the mere inclusion of this provision in the legislation will encourage other countries to deny inspections on national security grounds. If we should enact to so-called national security exception, we can be sure that the Chinese will seize upon the precedent we set and use it to undermine the effectiveness of the entire certification regime.

I have similar concerns regarding section 403, which would exempt from reporting and routine inspection requirements unscheduled discrete organic chemicals that are coincidental byproducts and are not isolated or captured for use or sale. While waste streams are not, in themselves, a threat to the object and purposes of the CWC regime, monitoring of such streams does afford one of the most convenient and nonintrusive means of determining whether a facility is worthy of concern in the first place.

The drafters of this provision are concerned that CWC implementation would otherwise require paper manufacturers to undertake costly monitoring of their waste streams, and that is an understandable concern. There is no need, however, to grant such a broad exemption as is currently contained in this section.

I am also troubled by: The broad compensation scheme in section 103 that does not even require a plaintiff to prove its case by a preponderance of the evidence to receive taxpayer funded compensation for the loss of trade secrets; and The limitation in sections 102 and 308 on the Government's power to require contractors to submit to CWC inspections.

I hope to work with other Senators and the administration to ameliorate these concerns prior to enactment of this measure. Treaties are solemn obligations, and the Chemical Weapons Convention, with all its faults, is our best hope for exposing violators and mobilizing the world so as to put a stop to chemical weapons. We must resist the urge, therefore, to enact provisions that could conflict with our treaty obligations and do damage to the effectiveness of the treaty regime.

Mr. LEAHY. Mr. President, the Chemical Weapons Convention was initiated by President Reagan, negotiated by President Bush and ratified on behalf of the United States by President Clinton. The ratification of this convention was a major achievement that consumed a great deal of the time and attention of the Senate. When the Senate gave its advise and consent to ratification of the Chemical Weapons Convention, the administration told us it was imperative that we act on implementing legislation as quickly as possible. The Judiciary Committee had the task of reporting back to the Senate with implementing legislation in time for Senate consideration before our Memorial Day recess.

The implementing legislation considered by the Senate today is where the rubber meets the road. It will define precisely how the general obligations of the international treaty will affect American citizens and American chemical companies.

A significant principle of the convention is set forth in Article VII regarding 'National Implementation Measures.' This principle makes clear that each state party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this convention. My objective when I began work on this legislation was to make sure that it reflected our constitutional principles and sound public policy, while fulfilling our obligations under the convention.

Over the last few weeks, the Judiciary Committee held a hearing, solicited the advice of experts from both the administration and in the private sector, and worked to craft legislation we could report to the Senate in a very short time frame. I commend my colleagues on the Judiciary Committee, and especially Chairman Hatch, Senator Biden, and Senator Kyl, for their diligence and efforts in fulfilling this

Committee's responsibilities. Senator Lugar deserves enormous credit for his constructive and helpful work in reaching the compromises necessary to get this legislation done.

I also thank Ivo Spalatin, Dave Barton, and Bernie Sewart, from the Arms Control and Disarmament Agency; Bill Danvers and Gordy Bendick, from the National Security Council; Steven Goldman and Ann Connaughton from the Department of Commerce; Eileen Gillio from the Department of Defense; and Craig Iscoe from the Department of Justice. These dedicated employees from Federal agencies and the White House spent hours, even late into the night, to share their expertise with the committee. We appreciate their hard work.

The hearing we held on May 13, 1997, regarding the administration's implementing legislation, S. 610, raised a number of issues that needed to be addressed. For example, one aspect of S.610 that required our attention was its blanket exception from the Freedom of Information Act for all information reported to, or otherwise obtained by any of the agencies involved in implementing the convention.

Even a witness from the Department of Justice admitted that this provision was not intended, for example, to limit public access to records concerning the number of inspections conducted under the convention, even if that information was reported to, or otherwise obtained by the U.S. National Authority from the Technical Secretariat. He agreed that this provision could be clarified.

The committee amendment to S.610 substantially improves this aspect of the legislation by removing the blanket exception under the Freedom of Information Act contained in the original bill. The substitute retains protection for trade secrets and other proprietary business information provided under the act and the convention, but the operations of the Federal agencies in implementing this act will not be cloaked in secrecy. They will be fully subject to the FOIA--as they should be.

Yet another provision in S.610, as introduced, could have been construed to penalize a person for refusing to consent to an entry or inspection required under the convention. A Justice Department witness testified at

the Judiciary Committee hearing that this section is inelegant and fails to account for the process agreed to in the conditions of ratification. The implementing legislation reported by the committee clarifies this provision, and affirms the constitutional right of every American to refuse to give their consent to a search and the requirement that the Government obtain a warrant. We also heard from several witnesses about including in the implementing legislation a mechanism to compensate those companies that suffer a loss of trade secrets or other confidential or proprietary information due to their compliance with the convention. The implementing legislation we reported out of the Judiciary Committee provides a compensation scheme that I sincerely hope will not become a surer bet than the lottery for a payout to

companies subject to the convention. This scheme will, after the plaintiff establishes a prima facie case, shift the burden to the Government to prove that any loss did not arise from the company's compliance with the convention. Proving a negative will be no easy task for the Government, which may legitimately decide simply to settle such claims, despite their lack of merit. We may have to revisit this scheme if it proves to be authorization for a legal holdup of the U.S. Treasury.

Other provisions in this implementing legislation also give me pause. It does not reflect all the changes each of us would like in the exact form we would like them. But it certainly reflects good faith compromises on both sides.